

(1) Explicitly authorized by a public authority or a railroad;

(2) Dedicated for the use of non-vehicular traffic, including pedestrians, bicyclists, and others; and

(3) Not associated with a public highway, road, or street, or a private roadway.

Public report of warning system malfunction or public report of warning system malfunction at a highway-rail grade crossing means a report that contains specific information regarding a warning system malfunction at a highway-rail grade crossing that is supplied to a railroad via the ENS by a member of the public who does not belong to one of the categories of individuals listed in the definition of *Credible report of warning system malfunction* or *credible report of warning system malfunction at a highway-rail grade crossing* in § 234.5.

Third-party telephone service means a service that receives telephonic reports of unsafe conditions at highway-rail and pathway grade crossings on behalf of a railroad. A third-party telephone service that receives reports on behalf of a dispatching railroad is the only entity between the receipt of the report from the telephone caller and the transmission of the report to the dispatching railroad. A third-party telephone service that receives reports on behalf of a maintaining railroad is the only entity between the receipt of the report from a dispatching railroad and the transmission of the report to the maintaining railroad.

Warning system failure at a pathway grade crossing means failure of an active pathway grade crossing warning system to perform as intended.

§ 234.303 Emergency notification systems for telephonic reporting of unsafe conditions at highway-rail and pathway grade crossings.

(a) *Duty of dispatching railroad in general.* Each railroad shall establish and maintain a toll-free telephone service by which the railroad can directly and promptly receive telephone calls from the public reporting specific information about any of the conditions listed in paragraph (c) of this section with respect to a highway-rail grade crossing and paragraph (d) of this section with respect to a pathway grade crossing

through which the railroad dispatches a train, except as provided in paragraphs (b) and (e) of this section, and in § 234.306(a). The dispatching railroad shall either have a live person answer calls directly and promptly, or use an automated answering system or a third-party telephone service for the purpose of receiving reports pursuant to this section, except as provided in paragraph (b) of this section.

(b) *Exceptions for certain railroads.* If a dispatching railroad operates in accordance with either of the conditions set forth in this paragraph, the railroad is not subject to the general duties stated in the last sentence of paragraph (a) of this section.

(1) If a railroad dispatches one or more trains through a highway-rail or pathway grade crossing, each of which is authorized to travel through the crossing at speeds not greater than 20 miles per hour (mph), the railroad may use an answering machine to receive calls regarding unsafe conditions at such a crossing. If using an answering machine pursuant to this paragraph, the railroad must retrieve its messages immediately prior to the start of its operations each day.

(2) If a railroad dispatches one or more trains through a highway-rail or pathway grade crossing on a seasonal or intermittent basis (*e.g.*, tourist, bi-weekly service, or non-24-hour service), and any of the trains is authorized to travel through the crossing at speeds greater than 20 mph, the railroad may use an answering machine to receive calls regarding unsafe conditions at such a crossing, but only during hours of non-operation. If using an answering machine pursuant to this paragraph (b), during periods of non-operation, the railroad must retrieve its messages daily. However, the railroad must retrieve its messages immediately prior to the start of its operations for the day, and during hours of operation the dispatching railroad shall either have a live person answer calls directly and promptly, use an automated answering system, or employ a third-party telephone service, in accordance with paragraph (a) of this section, to receive reports regarding unsafe conditions at crossings through which it dispatches trains.

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(c) *Reportable unsafe conditions at highway-rail grade crossings.* Each railroad shall establish a service pursuant to paragraph (a) of this section, except as provided in paragraphs (b) and (e) of this section, and in § 234.306(a), to receive telephone calls regarding the following conditions with respect to a highway-rail grade crossing through which it dispatches a train:

- (1) A warning system malfunction at the highway-rail grade crossing;
- (2) A disabled vehicle or other obstruction blocking a railroad track at the highway-rail grade crossing;
- (3) An obstruction to the view of a pedestrian or a vehicle operator for a reasonable distance in either direction of a train's approach to the highway-rail grade crossing; or
- (4) Any information relating to any other unsafe condition at the highway-rail grade crossing.

(d) *Reportable unsafe conditions at pathway grade crossings.* Each railroad shall establish a service pursuant to paragraph (a) of this section, except as provided in paragraphs (b) and (e) of this section, and in § 234.306(a), to receive telephone calls regarding the following conditions with respect to a pathway grade crossing through which it dispatches a train:

- (1) A failure of the active warning system at the pathway grade crossing to perform as intended;
- (2) An obstruction blocking a railroad track at the pathway grade crossing;
- (3) An obstruction to the view of a pathway grade crossing user for a reasonable distance in either direction of a train's approach to the pathway grade crossing; or
- (4) Any information relating to any other unsafe condition at the pathway grade crossing.

(e) *Class II or Class III railroads.* A Class II or Class III railroad that dispatches one or more trains through a highway-rail or pathway grade crossing within an area in which the use of a non-toll-free number would not incur any additional fees for the caller than if a toll-free number were used, may use that non-toll-free number to receive calls pursuant to paragraph (a) of this section regarding each such crossing in that area.

(f) *Reports not made through the ENS.* If a report of an unsafe condition at a highway-rail or pathway grade crossing is not made through the telephone service described in paragraph (a) of this section, this subpart E does not apply to that report.

§ 234.305 Remedial actions in response to reports of unsafe conditions at highway-rail and pathway grade crossings.

(a) *General rule on response to credible report of warning system malfunction at a highway-rail grade crossing.* (1) If a railroad receives a credible report of a warning system malfunction at a highway-rail grade crossing pursuant to § 234.303(c)(1) and the railroad has maintenance responsibility for the warning system to which the report pertains, then it shall take the appropriate action required by subpart C of this part.

(2) If a railroad receives a credible report of a warning system malfunction at a highway-rail grade crossing pursuant to § 234.303(c)(1) and the railroad has dispatching responsibility for the crossing, but does not have maintenance responsibility for the warning system to which the report pertains, it shall promptly contact all trains that are authorized to operate through the highway-rail grade crossing in an effort to notify the train crews of the reported malfunction prior to each train's arrival at the crossing. After contacting the appropriate trains, the railroad shall then promptly contact the maintaining railroad and inform it of the reported malfunction. The maintaining railroad shall then take the appropriate action required by subpart C of this part.

(b) *General rule on response to public report of warning system malfunction at a highway-rail grade crossing.* (1) If a railroad receives a public report of a warning system malfunction at a highway-rail grade crossing pursuant to § 234.303(c)(1) and the railroad has maintenance responsibility for the warning system to which the report pertains, the railroad shall promptly contact all trains that are authorized to operate through the highway-rail grade crossing in an effort to notify the train crews of the reported malfunction prior to each train's arrival at the crossing.